IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 326 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.K.TRIVEDI
and
Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

UNION OF INDIA

Versus

IRSHADBIBI ABBASALI SHEIKH

Appearance:

1. First Appeal No. 326 of 1999

MR UM SHASTRI for Appellant No. 1

MR JC SHETH for Appellant No. 1

MR DN PANDYA for Respondent No. 1

CORAM : MR.JUSTICE D.K.TRIVEDI
and
MR.JUSTICE K.M.MEHTA

Date of decision: 21/03/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE D.K.TRIVEDI)

#. The appellant Union of India has challenged the judgement and award passed by the Railway Claim Tribunal,

at Ahmedabad, Ahmedabad Bench, in Claim Application No. OA 9800052 filed by the respondent dated 5.1.1999.

#. Considering the request made by the counsel appearing in the matter before us, we have fixed the appeal for final hearing. R&P is also called for from the Tribunal.

#. Mr. J.C. Sheth, learned advocate for the appellant has while arguing the matter has taken us through the judgement under challenge passed by the Railway Claims Tribunal and also took us through the R&P, which received from the Railway Claims Tribunal. It is the contention of Mr. Sheth that the Tribunal has without giving any opportunity to the appellant had mechanically decided the application in favour of the respondent claimant and awarded sum of Rs.4 lacs with interest at the rate of 12% p.a., which resulted into miscarriage of justice.

#. We have perused the judgement under challenge as well as the R&P of the case. Reading the judgement, we are of the view that while granting application, the Tribunal has not assigned any reasons. It is further found from the record that the Tribunal has not given any opportunity to the appellant when the application for adjournment was sought for by the Railway authority, requesting the Tribunal for an adjournment on the ground that they want to lead evidence by examining the witnesses in support of their case as well as to produce documents. The said application was rejected by the Tribunal and on the very day, the Tribunal has proceeded with the hearing and allowed the application as aforesaid.

#. As found from the record, the respondent original applicant has made an application for compensation before the Tribunal on 30th September, 1998. As found from the application that on 5.2.1998 the deceased Abbasali Sheikh was travelling from Vyara to Dharangaon by Train No. 113 after purchasing the second class ticket bearing ticket No. 29458 and due heavy rush in the train, he fell down from the train at the time of boarding the train and he sustained various injuries and he died during treatment in the hospital. According to the applicant that her husband was died in an railway accident, an application for seeking compensation for Rs. 4 lacs was submitted. The applicant had also produced various documents before the Tribunal namely panchnama, FIR, P.M.report of the deceased done by the Medical Officer of the Hospital and other documents.

#. After the summons was served on the appellant Railway

Authority, the written statement was submitted, which is at Ex. 6 and the railway authority has denied the case put forward by the applicant and the said written statement was verified by Shri D.S. Meena, the Presenting Officer of the Railway Claims Tribunal, Ahmedabad dated 2.11.1998. The Tribunal has on the basis of the pleadings has raised issues for determination on 11.11.1998.

#. To prove the case, Irshadbibi widow of Abbasali Shaikh, her evidence was recorded at Ex.8. She has deposed that her husband was travelling from Vyara to Dharangaon by train No. 113 down by purchasing second class ticket being Ticket No. 29458 and her husband was fell down from the train and he sustained injuries on his head and he was shifted to hospital, where he died. She has also gone to the hospital. She has also produced the postmortem note of her husband, which is at Ex.12. During her evidence, she has also produced other documents, namely FIR which is at Ex.9, railway ticket which is at Ex. 10, copy of the inquest report which is at Ex. 11, death certificate issued by the authority which is at Ex.13 and ration card, which is at Ex.14. In cross-examination, she has deposed that she married with deceased when she was child. She has further admitted that she has no personal knowledge in respect of the accident in which her husband died. It is further found from her evidence in cross examination that, she was informed about the accident that her husband was fell down from the train due to rush and she has admitted that she was not along with her husband. Her evidence was recorded on 8th December, 1998.

#. The Presenting Officer of the Railway Claims Tribunal has submitted an application Ex. 16 on 5.1.1999 for seeking long adjournment on the ground that they want to examine witnesses and also require to produce evidence in respect of the accident. The Tribunal has on the very day has rejected the said application Ex. 16 by passing an order, which reads as under :-

" Heard. Having sufficient documentary evidence in the case, no purpose to give further long time. Hence rejected today.

Date : 5.1.1999 Sd/- "

#. On considering the submissions made before us and as observed earlier, the Tribunal has not given any reason nor even appreciated the evidence on the record of the

case while disposing the application. As observed earlier, the application Ex. 16, seeking for long adjournment, filed by the appellant Railway Authority, was rejected by the Tribunal. In our view, though the request was made for long adjournment in application Ex.16, the Tribunal ought to have granted some time by imposing condition that if within stipulated time, if the witnesses are produced or no evidence is produced, the Tribunal will proceed further with the hearing. Though the documents were produced by the respondent applicant as observed earlier, the Tribunal has not appreciated and discussed the said evidences led on behalf of the respondent original applicant. In our view, the Tribunal was require to discuss the evidence led before him and to decide whether the applicant has established the case for seeking compensation in light of the Railway Accident and Untoward Incident (Compensation) Amendment Rules 1997. In our view, the award under challenge is without any reason and accordingly, without examining the contentions raised before us on merits, we dispose of this appeal and set aside the award under challenge and matter is required reconsideration by the Railway Claims Tribunal while remanding the matter back to the Tribunal with certain direction.

##. Mr. J.C. Sheth, learned advocate for the appellant Railway Authority has assured us that whatever witnesses they want to examine in support of their case as well as the documents, which they rely, they will produce before the Tribunal on 28th April, 2003. Mr. Pandya, learned advocate for the respondent - original applicant has also assured this Court that respondent applicant with advocate will remain present before the Tribunal on 28th April, 2003. The parties are permitted to lead evidence in support of their case and further the Tribunal shall proceed with the case from the stage where the evidence of the claimant was recorded. As observed earlier, when the parties and their advocates remained present before the Tribunal on 28th April, 2003, the Tribunal shall fix the hearing of the claim application and shall decide the same in accordance with law on or before 30th June, 2003. The Office is directed to send back the R&P forthwith to the Railway Claims Tribunal at Ahmedabad.

##. As we have set aside the award under challenge and remanded the matter back for consideration before the Railway Claims Tribunal, the amount deposited by the appellant - Railway Authority in pursuance of the order passed in Civil Application No. 282 of 1999, the said amount is ordered to be kept in Fixed Deposit as it is and the Tribunal shall pass appropriate order when the

Tribunal decide the claim application finally as per the directions given by this Court.

(D.K. Trivedi, J.)

(K.M. Mehta, J.)
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